

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2008-261-C**

<b>In Re:</b>	)	
<b>Application of NexUSTel, LLC</b>	)	
<b>for a Certificate of Public Convenience</b>	)	
<b>and Necessity to Provide Resold</b>	)	<b>SETTLEMENT AGREEMENT</b>
<b>Interexchange Telecommunications</b>	)	
<b>Services to and from all Points</b>	)	
<b>throughout the State of South Carolina</b>	)	
<b>and for Alternative Regulation</b>	)	

This Settlement Agreement (“Settlement Agreement”) is made by and among the Office of Regulatory Staff (“ORS”) and NexUSTel, LLC (“NexUSTel” or “the Company”) (collectively referred to as the “Parties” or sometimes individually as “Party”);

WHEREAS, on July 7, 2008, NexUSTel filed its Application requesting (i) a Certificate of Public Convenience and Necessity be granted authorizing NexUSTel to provide resold interexchange telecommunications services throughout the State of South Carolina; (ii) alternative regulation of its interexchange services, pursuant to S.C. Code Ann. § 58-9-585; (iii) waiver of Regulation 103-610 regarding location of records; and (iv) a waiver of any requirement to maintain financial records in conformance with the Uniform System of Accounts (“ASOA”);

WHEREAS on July 9, 2008, the Commission issued a Notice of Filing and Hearing and established a return date of August 12, 2008, for the filing of letters of protest or petitions to intervene and established a hearing date of October 6, 2008 for the application to be heard before a hearing examiner;

WHEREAS, on July 2, 2008, the South Carolina Telephone Coalition (“SCTC”) filed a Petition to Intervene in this docket;

WHEREAS, on June 13, 2008, the Commission issued its Order No. 2008-412 by which the Commission appointed David Butler, Esquire as the Hearing Examiner in this matter;

WHEREAS, on August 25, 2008, NexUSTel pre-filed the direct testimony of Jorge Asecio with the Commission;

WHEREAS, the purpose of this proceeding is to review the application filed by NexUSTel and its requests (i) for a Certificate of Public Convenience and Necessity to provide resold interexchange telecommunications services within the State of South Carolina; (ii) for alternative regulation of its interexchange services (iii) for waiver of Commission Regulation, 103-610 regarding location of records; and (iv) for waiver of any requirement to maintain financial records in conformance with the USOA;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical, managerial, and financial expertise of NexUSTel to provide the services requested in the Application;

WHEREAS, ORS has reviewed the Application and the financial data provided by NexUSTel, and ORS has calculated certain performance ratios based upon information provided by the NexUSTel;

WHEREAS, ORS has investigated the services to be offered by NexUSTel and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs submitted by NexUSTel;

WHEREAS, ORS has reviewed the pre-filed testimony of Jorge Asecio;

WHEREAS, as a result of its investigations, ORS has determined (a) NexUSTel intends to offer resold long-distance telecommunications services, and will offer retail voice services in a prepaid and presubscribed basis; intends to offer Primary Interexchange Service which is a non-prepaid interlata and intraLATA toll service; (b) the officers of NexUSTel possess sufficient technical and managerial abilities to adequately provide the services applied for; (c) based upon the information provided and the analysis performed, NexUSTel appears to have access to sufficient financial resources necessary to provide the services proposed in its application; (d) NexUSTel's proposed tariffs with the amendments as agreed to in this Settlement Agreement comply with Commission statutes and regulations; (e) the provision of services by NexUSTel will not adversely impact the availability of affordable telecommunications services; (f) to the extent it is required to do so by the Commission, NexUSTel will participate in the support of universally available telephone service at affordable rates; and (g) the provision of interexchange services by NexUSTel will not adversely impact the public interest;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

- 1) The Parties agree that NexUSTel's Application and exhibits to the Application are incorporated into this Settlement Agreement and made a part hereof;
- 2) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of NexUSTel's witness Jorge Asecio without cross-examination by ORS;

3) The Parties agree that NexUSTel should be granted a Certificate of Public Convenience and Necessity to provide resold interexchange telecommunications services within the state of South Carolina;

4) NexUSTel has requested a waiver of 26 S.C. Code Ann. Regulation 103-610 concerning the location of books and records. However, S.C. Code Ann. §58-9-380 (Supp. 2006) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff. No books, accounts, papers or records required by the ORS to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing NexUSTel to maintain its books and records outside of the State of South Carolina in exchange for NexUSTel agreeing to provide ORS access to its books and records. ORS is agreeable to NexUSTel maintaining its books and records at its offices in the State of Florida, and NexUSTel agrees to notify ORS of any change in the location of the principal office or in the location where the books and records are maintained. This provision of the Settlement Agreement shall not be construed as a waiver by ORS of S.C. Code Ann. § 58-4-55 (Supp. 2006) or § 58-9-1070 (Supp. 2006). ORS expressly reserves its rights to require the production of books, records and other information located within or outside of the State of South Carolina in order to carry out its duties in compliance with any state or federal regulation;

5) NexUSTel has requested a waiver of any rule or regulation that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (“USOA”). NexUSTel acknowledges that S.C. Code Ann. § 58-9-340 (Supp. 2006) provides that the ORS may, in its discretion and subject to the approval of the Commission, prescribe

systems of accounts to be kept by telephone utilities subject to the commission's jurisdiction and that the ORS may prescribe the manner in which the accounts shall be kept and may require every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the ORS. NexUSTel agrees to keep its books, papers, and records in such a manner that permits ORS to audit the company's South Carolina revenues and expenses for compliance with programs such as but not limited to the Universal Service Fund ("USF") and the Interim LEC Fund, dual party relay service fund, and gross receipts. NexUSTel agrees to complete the reporting forms for such programs as may be required by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

6) ORS does not oppose NexUSTel's requests for alternative regulation of its interexchange service offerings consistent with the procedures described and set forth in Orders 95-1734 and 96-55 in Docket No. 96-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C, specifically (i) regulation of these services listed above in the same manner as these services are regulated of AT&T Communications of the Southern States, Inc., (ii) removal of the maximum rate tariff requirements for NexUSTel's business services, private line, and customer network-type offerings, except in instances governed by Order No. 2001-997 which reinstituted maximum rates for surcharges and rates associated with certain intrastate operator-assisted calls; (iii) presumptively valid tariff filings for these interexchange services unless an investigation of a particular filing is instituted within seven (7) days, in which case the tariff filing will be suspended until resolution of the investigation or until further order of the Commission; and (iv) grant NexUSTel the same treatment as AT&T Communications of the Southern States, Inc. in connection with any future relaxation of reporting requirements;

7) NexUSTel agrees to resell the services only of those local exchange providers or interexchange carriers authorized to do business in South Carolina by the Commission;

8) NexUSTel agrees that it will allow an end-user of resold services to access an alternative interexchange carrier or operator service provider if the end-user expresses such a desire;

9) NexUSTel agrees to file necessary financial information with the Commission and ORS for universal service fund reporting, dual party relay service fund reporting, interim LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as NexUSTel. The Parties agree that such reports shall be filed pursuant to ORS' instructions and monies shall be remitted in accordance with the directions of the ORS and the Commission.

10) NexUSTel agrees to maintain its books and records in a manner that would permit ORS to discern NexUSTel's South Carolina operations in any of the company's reports filed with the Commission and provided to ORS.

11) NexUSTel agrees to file with the Commission and ORS a completed authorized utility representative forms within thirty (30) days of the Commission's order.

12) Prior to offer prepaid calling card and/or long distance services in South Carolina, NexUSTel agrees that it shall post a surety bond in the amount of \$5,000 as required by the Commission;

13) In the event that NexUSTel offers long distance services to end users, NexUSTel agrees to comply with the verification regulations governing change of preferred carriers as established by Federal Communications Commission ("FCC"). In addition, NexUSTel agrees to

comply with the marketing practices and guidelines established by the Commission in Order No. 95-658;

14) NexUSTel agrees to comply with South Carolina Code Section § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, NexUSTel agrees to adhere to the FCC's rule 47 C.F.R. § 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document.

15) It is understood and agreed that NexUSTel will not offer or provide any service that would implicate Title 23, Chapter 47 of the South Carolina Code Annotated regarding "Public Safety Communications Centers," but in the event that NexUSTel in the future offers or provides a service to which Title 23, Chapter 47 of the South Carolina Code regarding "Public Safety Communications Centers," also known as 911 services, NexUSTel agrees to comply with Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a "Public Safety Communications Center," also known as 911 services." At that time, NexUSTel agrees to contact the appropriate authorities regarding 911 services in the counties and cities where NexUSTel will be operating prior to initiating local service in South Carolina and shall provide the 911 coordinator in each county and/or city with information regarding NexUSTel's operations. Attached as Exhibit 1 to this Settlement Agreement is a memorandum from the State 911 Office which provides contact information for the County 911 Coordinators; NexUSTel agrees to comply with all rules and regulations of the Commission unless the Commission has expressly waived such rule or regulation;

16) NexUSTel agrees to file a final revised tariff with both the ORS and the Commission and the revised tariff shall reflect and be in accordance with ORS' recommendations.

17) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

18) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.

19) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the



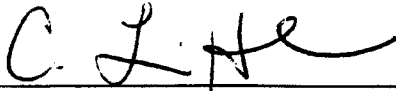
Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation.

20) This Settlement Agreement shall be interpreted according to South Carolina law.

21) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

WE AGREE:

**Representing the Office of Regulatory Staff**

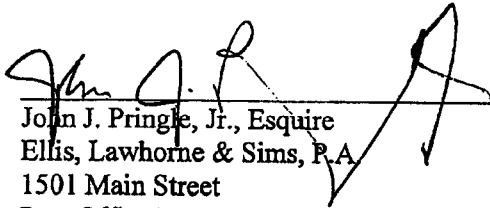


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09/30/08  
Date

WE AGREE:

**Representing NexUSTel, LLC**



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9/30/08  
Date

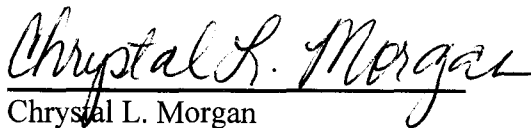
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IN RE:	Application of NexUSTel, LLC for a Certificate of Public Convenience and Necessity to Provide Resold Interexchange Telecommunications Services to and from all Points throughout the State of South Carolina and for Alternative Regulation	) ) ) ) )	<b>CERTIFICATE OF SERVICE</b>
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This is to certify that I, Chrystal L. Morgan, have this date served one (1) copy of the **SETTLEMENT AGREEMENT** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Andrew D. Lipman, Esquire  
Danielle C. Burt, Esquire  
Bingham McCutchen, LLP  
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Chrystal L. Morgan

September 30, 2008  
Columbia, South Carolina